Supreme Court of Nova Scotia.

THE NOVA SCOTIA TELEGRAPH CO. *vs.* THE AMERICAN TELEGRAPH CO.[1]

By the terms of a lease of property situate within the British dominions, it was provided that certain payments should be made periodically in "dollars and cents of United States currency." After the execution of the lease the Congress of the United States passed a law authorizing an issue of treasury notes not bearing interest, and provided, that they "shall be lawful money and a legal tender in payment of all debts public and private, within the United States—except in payment of duties on imports and interest on United States bonds or notes:"

Held, that the tender of United States treasury notes, issued under this act, was not a legal and sufficient tender of the payments due under the lease.

This was an action to recover the sum of $6500 and interest, under a lease executed by the plaintiffs on the 4th May, 1860, to the defendants, whereby the plaintiffs granted and leased to the defendants all the telegraph lines, with the appurtenances belonging to them in and throughout the Province of Nova Scotia, for the term of ten years, commencing from the 15th May, 1860, subject to the payment of the rent of $6000 per annum, payable semi-annually; and the further sum of $500 per annum, also payable semi-annually towards the taxes of that company, it being stipulated and agreed, that all such payments should be made "*in dollars and cents of United States currency.*" In the month of November, 1862, and again in the month of May, 1863, the agent of the defendants tendered to the treasurer of the plaintiffs in Halifax certain United States treasury notes, issued under an Act of Congress of February, 1862, entitled: "An act to authorize an additional issue of United States notes and for other purposes," to the amount of $3250, in full payment of each of the semi-annual payments which had respectively become due under the lease. The treasurer objected to the tender and refused to receive the notes when so tendered, requiring such payments to be made in specie, which not having been done, the present action was brought.

Johnstone, Attorney-General, and *Smith*, Q. C., for plaintiffs.

McCully, Solicitor-General, and *Ritchie*, Q. C., for defendants.

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[1] We are indebted for this case to the kindness of Mr. Justice INGRAHAM, of the Supreme Court of New York.

Des Barres, J., after stating the facts proceeded:—The question submitted for the judgment of the court is, whether the tender of United States treasury notes, issued under the Act of Congress referred to, is a legal and sufficient tender of the semi-annual payments due in November, 1862, and May, 1863, under the lease. By the Act of Congress of February, 1862, the Secretary of the Treasury is authorized to issue on the credit of the United States $150,000,000 of United States notes not bearing interest, payable to bearer at the Treasury of the United States, of such denominations as he may deem expedient, not less than $5 each, provided that such notes shall be receivable in payment of taxes, internal duties, debts, and demands of every kind due to the United States, except duties on imports, and of all claims and demands against the United States of every kind whatsoever, except for interest upon bonds and notes, which shall be paid in coin, "*and shall also be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest as aforesaid.*"

It was contended at the argument, that the defendants by the terms of the lease were bound to pay the rent reserved therein in specie, viz., in dollars and cents, the current coin of the United States, and that the tender made by the defendants in treasury notes was not, therefore, a fulfilment of the contract; first, because the contract or lease entered into between the parties, was made in Nova Scotia; secondly, because the rent reserved, and the allowance of $500 a year for taxes, are payable in Nova Scotia; and, thirdly, because the property demised is within the province of Nova Scotia. It was also insisted that assuming the rent to be payable in the currency of the United States as contended for on the part of the defendants, the plaintiffs were not bound to receive the notes tendered in payment, because Congress had no power under the Constitution of the United States to make such notes a legal tender for private debts, and if it had, the Act of Congress declaring them a legal tender could not be construed as having a retrospective effect. The two last objections are substantially the same as were raised in the case of *Meyer* vs. *Roosevelt*, which was decided in the Supreme Court for the state of New York in March Term, 1863, and cited at the argument by the Attorney-General. In that case the plaintiff desiring to pay a mortgage held by defendant, in premises purchased and conveyed to the plaintiff subject to the mortgage, tendered to the

defendant the amount due on the mortgage in United States notes, such as were tendered here. The defendant refused to receive them as a legal tender, claiming payment in specie. The question as to the legality of the tender was submitted to the learned judges of that court, who unanimously expressed the opinion that the framers of the Constitution intended to make coin and nothing else a legal tender in payment of debts, and while they conceded that Congress had power to issue paper money to meet the exigencies of the Government, they held that it had no power to pass an act declaring such money a legal tender in payment of private debts, such at least as were created before the passage of that act. If the ruling in that case had not been questioned, the present case, I presume, would never have been presented to us for consideration, but on being brought up before the learned judges of the Court of Appeals for the same state, the decision in *Meyer* vs. *Roosevelt* (of which I cannot say I disapprove) was reversed, and treasury notes were by that court held and declared to be a legal tender for payment of all debts contracted there. I do not know whether the decision of the appellate court has been acquiesced in or not. If approved, and there is no intention of demanding a review of it by the Supreme Court of the United States, the important question involved must be considered as judicially settled in that country; but it does not follow that this decision is to be considered as binding or affecting any contracts made here. It is not my intention to express any opinion as to the constitutional right of Congress to declare these treasury notes a legal tender within the United States, nor is it necessary, in the view I take of this case, to decide whether that act has or not a retrospective operation. The consideration of these points would open up a large field for inquiry, not connected with this case, which I think more appropriately belongs to and may more fitly be left as it has been, for the investigation and decision of the Federal courts: but looking at these questions, in all their bearings, without intending to do more than merely to state my present impressions with regard to them, I may say, with all deference to the learned judges of the appellate court, that I have not been able to remove the impression resting in my mind, that the conclusion arrived at by the Supreme Court in *Meyer* vs. *Roosevelt* is a sound conclusion. Assuming, however, that Congress had the power it has exercised of making these treasury notes a legal tender within the United

States, and that the act was intended to apply to past as well as future transactions, the question here is whether the plaintiffs, according to the terms of the lease granted to the defendants, are bound to receive these treasury notes in payment of the rent due them—in other words, whether the tender made in these treasury notes for rent payable in Nova Scotia is a legal tender, and can be considered as a fulfilment of the terms of that lease. The parties had a right to make the rent payable in coin or bills, or in any other thing they pleased. They have thought fit to make it payable "in dollars and cents of United States currency," and there being now metallic money and treasury notes called paper money in circulation in the United States, we are called upon to decide whether it is optional with the defendants under this lease to pay the rent in either, or, whether the plaintiffs have a right to demand and insist that payment shall be made in metallic money, that is in gold and silver current in the United States.

If the words of the stipulation are construed to mean coin, or any notes or bills of credit to be issued under the authority of Congress, as a substitute for coin, giving to the defendants the alternative, it follows, that the tender must be held sufficient, but if the words were meant to be regarded as descriptive of the denomination or kind of money in which the payments were to be made, the tender cannot be held good.

It may reasonably be supposed, that the stipulation for payment was made in reference to the then existing state of the currency of the United States, and of the value of that currency here. At that time these treasury notes had no existence, and the possibility of such notes being substituted for coin, and made a legal tender for private debts within the United States, and of their being offered here as such, could not have been contemplated by either of the parties. If, indeed, such notes had been in circulation, and the plaintiffs had agreed to receive the rent in dollars and cents of United States currency, without discriminating whether they were to be metallic dollars or paper dollars, the case would have presented a different aspect, and probably have necessitated an inquiry, not now essential to the decision of this case. It was conceded at the argument, that before the passage of the Act of Congress of February, 1862, there was no lawful money of the United States other than gold and silver coin, that could be used as a legal tender, and it is not pretended that any other could have been so used. That fact, of which both parties

must have been aware, I think explains the meaning of the stipulation, and shows that the understandiag between them was, that the rent should be paid in coin, designated and known as metallic dollars and cents of United States currency, or in money of equal value. I do not see that any other interpretation can reasonably be given to the stipulation, for if that which is insisted upon on the part of the defendants be the true and proper interpretation, it will produce this result, that the plaintiffs will be compelled to receive in payment depreciated paper called money, which is not current in this province as money, and not uniformly current in the United States, it not being receivable there in payment of duties on imports, nor for interest on bonds, &c., due by the Government of the country. Surely nothing so unjust as this could ever have been intended, nor can I imagine it was for a moment contemplated, that while receiving and putting into their own pockets the money of extrinsic value, which the property demised produces in Nova Scotia, the defendants were to be at liberty to pay the rent as well as the taxes in depreciated paper money of the United States. I do not mean, however, to say, that the defendants are bound to pay the plaintiffs metallic money, simply because the property demised produces such money here; on the contrary, I readily admit that, if the plaintiffs by the terms of the lease have unwisely agreed to receive payment in any description of money that may be made or declared to be current in the United States, be it metallic or paper money, the tender of the latter must in that case be a fulfilment of the contract; but it must be borne in mind, that the rent is not expressed to be paid in United States currency, whatever that may be, it is expressly stipulated to be paid "*in dollars and cents of United States currency*," a stipulation, which I take it points to and means that particular denomination of money known as metallic dollars and cents of United States currency. In common parlance, dollars and cents mean *metallic dollars* and cents stamped under the authority of Government, and current at the mint value. Such are properly called money. It is true bank notes and bills of credit issued by authority and exchangeable for and redeemable in coin, are also called money, as such notes are used as a substitute for coin; but they are not a substitute, unless they are redeemable in coin.

The treasury notes issued under the Act of Congress of 1862 are not, and do not upon the face of them profess to be, redeemable in specie, nor are they considered, as I have already said, in

all cases as a substitute for specie in the United States. In this respect they differ very essentially from Bank of England notes, which, by stat. 3 & 4 W. 4, c. 98, are made a legal tender "to the amount expressed in such notes, and shall be taken to be valid as a tender to such amount for all sums above five pounds, on all occasions in which any tender of money may be legally made, so long as the Bank of England shall continue to pay their notes on demand, in legal coin." This act shows the wisdom and sound policy of the British Parliament, in providing that Bank of England notes shall be a legal tender only so long as the bank shall continne to pay them on demand, in legal coin. These notes may well be called money, for money can be obtained for them at any time; but no money can be obtained at the Treasury for treasury notes issued under the Act of Congress February, 1862, for they are not redeemable in money, and yet they are by that act declared to be a legal tender for all debts, except for duties on imports, &c., which must be paid in coin.

In considering this case, I have regarded these treasury notes as money current in the United States for all the purposes declared in the act, but I have arrived at the conclusion that this is not the description of money which the plaintiffs have a right to demand, and the defendants are bound to pay according to the terms of the lease. In my opinion the defendants are bound to pay the rent in metallic dollars and cents of United States currency, or in other money being of the value of such metallic dollars and cents, and, therefore, I am of opinion that the tender made to the plaintiffs in treasury notes of the United States was not a sufficient tender, and that the plaintiffs are entitled to have judgment for such amount as may be found to be due, calculated according to the value of the money in which I think the rent and taxes ought to be paid.

WILKINS, J.—The facts on which we are required to adjudicate are set forth in the special case entered into by the parties. When this contract was made, "dollars" was a legalized denomination of the currency of Nova Scotia, and accordingly the rent is reserved payable in dollars. In a subsequent part of the lease, however, which defines the medium of payment, different language is used. The phraseology adopted in this last respect is, "Such payment shall be made in dollars and cents of the United States currency." It was contended by the plaintiffs' counsel, that the effect of this was to give the plaintiffs a right to demand from the

defendants metallic dollars and cents. That argument, however, cannot be sustained. We must construe the language, dollars and cents, occurring in the passage of the lease in question in its relation to United States currency, as we should have to construe it in regard to Nova Scotia currency, if the qualifying words had not been adopted. Let us inquire, then, what would be the necessary judicial construction of this instrument if the qualifying language had been omitted, and the contract were, as in that case it would be, a strictly internal or domestic one.

In interpreting such a contract we should unquestionably hold that the phrase dollars and cents did not, either in a strict sense or in a familiar one, import coined money or *metallic* dollars and cents. The immediate and instinctive understanding of it, as interpreted by men of every degree of intelligence in every day's transactions of buying or selling, lending and borrowing, would be that its meaning was identical with that which the words lawful currency of the Province of Nova Scotia would have conveyed had they been substituted.

The president of a banking company established in this city, the most enlightened merchant, or the pettiest trader doing business in it, would alike interpret the language of a contract made in Halifax on the fifth day of January, 1864, whereby his debtor stipulated to pay him *a hundred dollars* on demand, as giving him no right to demand one hundred dollars of that particular metallic coin which is denominated a dollar, but he would acknowledge that the stipulation was performed by payment of twenty-five British sovereigns, or by a payment in paper money, if our legislature had made it a legal tender for payment of all debts. His business instincts would at once suggest to him that "dollars and cents" was synonymous with "legal currency." He would not, in the case put, feel himself obliged to accept paper money, because he knows that there is none such in circulation in this province which is made a legal tender *for all purposes*, and which would, therefore, constitute a medium of compulsory payment of the particular debt.

Thus, then, as dollars and cents is, and at the time of the making of this contract, and when the sums became due, was in the United States as in Nova Scotia, the legalized denomination of moneys of account or of the currency of either country, and as our inquiry is by the special case directed to a state of things existing in the United States of America in November, 1862, and May, 1863, that inquiry is reduced to the mere question,

"Were these particular notes of the United States Treasury, in which the tenders by the defendants were made, at the times when such were made, *the legal currency* or a constituent part of the legal currency of the United States of America in the sense of the contracting parties?" To interpret this contract according to their intentions we must adopt the well-known rule and regard the surrounding circumstances at the time when the contract was entered into.

The then legal currency of the United States was coined dollars and cents, or their equivalent in other coins, recognised and legalized by Congress, and at that time paper money was not in any form a portion of that legal currency—it was not then a legal tender within the Union. Such coined money was then the only legal tender throughout the United States in payment of all debts or duties, public or private, *without any qualification or limitation whatsoever.*

The immediate subject of contemplation, therefore, at the time of making this contract, in the minds of the contractors, must have been an agreed medium of payment of the accruing rents which, as an instrument of exchange and commerce in any and every relation of business in the United States of America, would be as available in that country for every trading purpose, at the times appointed for the payment of the rents, &c., as dollars and cents of the United States currency, the existing legal currency at the time of the contract, *at that time practically* was for every commercial purpose within and throughout the Union.

The parties, moreover, must be reasonably taken to have contemplated a medium of payment which would be so available in every Nova Scotian hand into which it might pass, for purposes of business or money exchanges, in any relation of commerce in the United States, after payment therein should be actually made in Halifax as stipulated.

In my judgment the medium so contemplated would have been, in legal effect, subject to any changes, for better or for worse, which might after the contract be operated on it by the authorized constitutional legislation of Congress, and assuming such legislation, I have no doubt that if the treasury notes tendered had been made in an unlimited sense "legal currency" throughout the Union, they would have been made, for the purposes of this contract, *dollars and cents of the United States currency.*

At the same time, I think that it cannot be reasonably held to have been contemplated by the parties, that the lessors bound themselves to receive, in satisfaction for the accruing rents, any medium of payment that would be only in a qualified and not in an absolute sense a portion of the lawful currency of the United States at the time appointed for payment. Now the greenback issue unquestionably was not, in an unlimited and unqualified sense, such currency. This view may be thus illustrated by reference to the actual relations of one of these contracting parties—the lessors—to the appointed medium of payment, *at the date of the lease.* Adverting to the nature of the legal currency of the United States at that time, it is clear that a Nova Scotian receiving it in Halifax, in payment of a debt due to him by a New York merchant, could in the exercise of commercial transactions with that city, which are in fact of frequent occurrence, pay his duties on his import of goods into the United States, in that which was, *at the time of the making of this contract*, dollars and cents of the United States currency.

He would have received at Halifax the metallic coins then legalized, or something which gave him a right to receive them in the United States, and with what he received he could pay such duties at the custom-house in the city of New York. *And surely, it was dollars and cents of United States currency that formed, and would form practically, a medium of commerce as unqualified and unlimited as that which I have described, which was really in contemplation of both these contracting parties when this lease was executed.*

If, however, we subject to this test the question submitted, what do we find as a necessary consequence of upholding the contention of these defendants, viz.: "*that they made a legal tender in the treasury notes in question?*" We find, as the effect of an express provision in the Act of Congress, that in November, 1862, and May, 1863, the times of payment, these plaintiffs could not, neither could those to whom they might have transferred these notes (had the plaintiffs accepted them), have made them *so available* for all the purposes to which the metallic coins or their equivalents could have been made subservient at the time of this contract, and that consequence results from a legislation of Congress *so special* that it affects some and *not all* even of the citizens of the Union.

The merchant, for instance, who has to find gold for payment of duties on importation of goods at the custom-house, is placed

on a different footing from that on which the merchant's customer stands, who can pay a debt that he owes to the merchant with the *greenback currency.* These views would, I think, derive support from the following consideration, though in reality it is involved in them.

This Act of Congress has not superseded or annulled the previously-existing metallic currency by the substitution of a currency of a different nature; but it has merely superadded a paper currency which it has made in common with the precious metals a legal tender, *sub modo* for the payment of debts within the Union. This, too, has been done avowedly as matter of special and anomalous legislation, to meet the exigencies of a crisis in the affairs of a great nation, which its statesmen and legislators did not foresee nor anticipate at the time when this particular lease was executed, and which, therefore, we cannot suppose to have been contemplated as a future contingency by the parties to that instrument. They, as I have already said, must be taken, nevertheless, to have contemplated the possible contingency (which fortunately for these plaintiffs has not happened) of there being, at the times named for payment, a different currency, *legally substituted for that which was the legal currency when the contract was entered into.* In the respect that there has been in this case instituted by Congress a mere subsidiary, and not a substituted currency, the case is not governed by a class of well-known authorities that would otherwise have affected and regulated the question under consideration. Those to which I more particularly refer are *Faw* vs. *Marstellar*, 2 Cranch 20; *Denmon* vs. *Executors of Denmon*, 1 Wash. Virg. Rep. 26; *Pong* vs. *Lindsay et al.*, Dyer 82, A.; and a case reported in Davies, p. 28.

In the judicial construction of contracts in the courts of the Union, these distinctions would of course have no weight, because in that country an express provision of this Act of Congress precludes the creditor—a subject of the law—from demanding payment of the debt due him in a metallic currency. "What is a legal tender to him for a debt due him in the United States?" is, however, one question. "What is such in our courts, and in reference to a contract made here, and to be performed here, by payment in dollars and cents of United States currency?" is, I apprehend, another and a different question. I have considered it judicially according to the best of my abilities. In doing so,

it affords me much pleasure to reflect that I am not called on to express an opinion on the difficult and delicate point of *the constitutionality of the Act of Congress*, respecting which a grave question has been raised in courts of the United States, whose enlightened decisions we have learned to respect.

The conclusion at which I have arrived is, that the notes tendered by these defendants were not "dollars and cents of United States currency" in the sense in which that phrase is used in the lease before us: in other words, that they were not, at the time of the tender, "the legal currency of the United States of America," for the purpose of forming a medium of performance of the covenant to pay the rents, &c., reserved in the document set forth in the special case submitted.

DODD, J., after stating the facts of the case, proceeded:—It may be and no doubt is difficult to find a case precisely in point with the present, and when that occurs, we must look to general principles, which must govern us in this instance as in all others. One of those principles is, that the law of the place where the contract is made, and where the money is to be paid, when these places are one and the same, shall prevail, unless words are used in the contract that would lead to a different conclusion.

The defendants have established themselves in this province, their business extending to every part of it, and while they contend that the plaintiffs are bound to receive their rents in a spurious currency, they may claim to shelter themselves under our Provincial Currency Act, and receive no debts in any moneys unless made a legal tender by that act; and in addition to this advantage, which they would possess over the plaintiffs by giving to the contract that unequal construction, the plaintiffs would be placed in this unreasonable position, that after receiving the amount due to them in the paper currency, they could only use it for limited purposes in the United States, and not for purposes that they might expressly require it for. I cannot suppose that either party, when the contract was entered into, looked to such a result as that, but that their arrangements and calculations were founded in good faith, and their contract based upon the currency of the United States that was then in existence in that country—that currency being a metallic one.

If I am correct in this view of the case, then the plaintiffs

come before the court with large equities in their favor, and unless restrained by some known principles of law, would be entitled to a judgment in their favor. The contract having been made in this province respecting property within it, and the rents accruing under it, to be paid into one of the banks of the province, makes it purely, as between the parties to it, a provincial contract, and in my opinion gives it a different position, and requires a different construction from a contract made in the province, and a debt becoming due under it and payable in the United States. In that case there might be some show of reason for bringing it within the purview of the Act of Congress. The act can have no legal or binding effect upon debts in this country, and how far the Congress may have the power to make such an enactment I am not prepared to say. That question has been argued in the Supreme Court in two districts of the state of New York,—in one the decision of the court was against that power, and in the other it was different,—and in both cases I understand an appeal was taken to the highest appellate jurisdiction of the United States, but, up to the present time I have not heard the result; neither is it my intention to decide this case upon the point; that the Act of Congress was not intended to be *ex post facto* in its operation, although taken at the argument by the Attorney-General, and I cannot help thinking, that a large amount of solid reasoning might be urged in support of it. The paper issue of the United States under the Act of Congress, may be admitted, would liquidate a debt contracted and payable in that country; but there is a marked distinction to a debt contracted in this province and payable here, notwithstanding the payment is to be made in dollars and cents of the currency of the United States. The parties to this suit, we must remember, are the "Nova Scotia Telegraph Co.," incorporated by an act of the Province, and the defendants a foreign company incorporated under a charter granted by the state of New Jersey. Now the rents to be paid the plaintiffs could only be legally tendered to them in the coins made a legal tender by the Provincial Currency Act, chapter 83 of the Revised Statutes, unless otherwise provided by the contract, and by that act, although several foreign coins are made a legal tender, yet the coins of the United States are not so, consequently the contract giving to the defendants the advantage of paying their rents and liabilities in dollars and cents of their own country was extending to them an import-

ant advantage, but not in my opinion to be enlarged beyond making their payments in the currency that existed in the United States when the contract was made. If, since the contract was entered into, circumstances have occurred in the United States to justify that country issuing a paper currency and making it a legal tender for debts due and payable there, surely it would be great injustice to the people of this provice to allow the citizens of the United States, under a contract entered into here, where no circumstances exist to change the commercial or political relations of the province since the contract was made, to pay their debts due and payable here in a paper currency of little more than half its value as expressed upon its face.

The Act of Congress declares the notes to be a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest, &c.; but it cannot be said that the debt claimed by the plaintiffs is a debt due and payable either as a public or private debt within the United States, and to no other class of debts than those referred to in the act can it be applicable. A debt due and payable in Nova Scotia, in law, can only be liquidated by the moneys mentioned in the Currency Act of the Province. Dollars and cents of the United States currency, if not referable solely to the dollar and cent current in that country when the contract was made, must refer to a dollar and cent current for all purposes; but, as I have said, the paper issue under the Act of Congress is not for all purposes but limited in its operation, and if the plaintiffs were now held to the tender made by the defendants, and had moneys to pay in the United States for either of the excepted purposes of the act, the moneys received from the defendants would not be available for that purpose; that consequence then cannot, in my opinion, be a just and reasonable solution of the contract.

If I had any doubt respecting this case, as to the justice of my views with reference to the defendants being liable to the plaintiffs in the current money of the United States when the contract was entered into, or what is equivalent to that currency, the case of *Pilkington* vs. *Commissioners for Claims*, 2 Knapp R. 17 to 21, would remove the doubt. That case is fully referred to in Story on the Conflict of Laws, sec. 313 *a*, and from that work I now quote: "The French Government, during the war between England and France, had confiscated a debt due from a French subject to a British subject, and subsequently an indemnity was

stipulated for on the part of the French Government; and there having been a great depreciation of the French currency after the time when the debt was confiscated, the question arose whether the debt was to be calculated at the value of the currency at the time when the confiscation took place or subsequently, and it was held it ought to be calculated according to the value at the time of the confiscation. Sir WILLIAM GRANT, in delivering the opinion of the court, said, 'great part of the argument at the bar would undoubtedly go to show that the commissioners have acted wrong in throwing that loss upon the French Government in any case, for they resemble it to the case of depreciation of currency happening between the time that a debt is contracted and the time it is paid, and they have quoted authorities for the purpose of showing that in such a case the loss must be borne by the creditors and not by the debtor. That point, it is unnecessary for the present purposes to consider, though Vinnius, whose authority was quoted the other day, certainly comes to a conclusion directly at variance with the decision in Sir John Davies's Reports' " (an authority strongly relied upon by the counsel for the defendants in the present case). Sir William, in a subsequent part of his opinion, again reverts to the same subject, and remarks: "We have said that as this point is not directly or immediately before us, it can make no part of our decree. At the same time it may not perhaps have been without some utility to have given an opinion upon it, inasmuch as it was argued and discussed at the bar; and we think, therefore, the commissioners have proceeded upon a perfectly right principle in those cases in which we understood they have made an allowance for the depreciation of paper money." Here, then, we have the opinion of the court delivered by that profound lawyer Sir WILLIAM GRANT, that in a case between when the debt was contracted and payable, and when it was paid, a depreciation in the currency of the country had taken place, the creditor was not to be the sufferer, but that he was to have an allowance made to him by the debtor to the extent of such depreciation. It is admitted in this case, that the paper money tendered to the plaintiffs is depreciated since its issue in the United States, and is of much less value than the dollar which was the currency of that country when the contract was made. Apart then from other considerations under the opinion of the court as delivered by Sir WILLIAM GRANT, the defendants would not discharge their liability to the plaintiffs by

tendering as they did in depreciated notes not equal in value to the currency when the contract was made, unless making an allowance for that depreciation. But without giving any positive opinion upon that point, I think, for the reasons previously stated, that the tender was not in accordance with the contract, therefore not a legal one, and that judgment should be entered for the plaintiffs for the amount of their claim, payable in the metallic dollar and cent of the United States currency, or that which is equivalent thereto, with interest from the 15th November, 1862, and 15th day of May, 1863, upon the respective sums due at those dates, according to the terms of the lease, with costs of suit.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW YORK.[1]

SUPREME COURT OF VERMONT.[2]

AGREEMENT.

Execution—Replevin.—An agreement was made between B. and D., by which B. was to furnish the money to purchase, in his name, 15,000 or 20,000 feet of oak timber, the same to be selected in the woods, standing, by D., and to be cut, hewn, rafted, and delivered by him to B., at Troy, for which he was to receive 10½ cents per cubic foot. *Held*, that B. had the general property in timber got out under this contract, and which D. was engaged in transporting to Troy; but that he had no right to the possession thereof. That as between B. and D., the latter had a special property in the timber, accompanied by the right of possession, and that D.'s interest was the subject of levy and sale under execution against him: *Weaver* vs. *Darby*, 42 Barb.

Held, also, that to an action of replevin, brought against D. by the purchaser at a sale under execution, proof of a general property in B. at the time of the levy, was not a good defence: *Id.*

That the plaintiff in such suit was entitled to recover, he having the right of possession, as against D., and the right of property, united. But that as the title he had acquired was a mere special property, he was only entitled to a verdict finding the property in him, and to an assessment of the value of the timber at the amount of the value of D.'s special property therein, viz.: 10½ cents per cubic foot, deducting therefrom the expense of transporting the timber to Troy: *Id.*

[1] From Hon. O. L. Barbour; to appear in vol. 42 of his Reports.

[2] For these abstracts we are indebted to the courtesy of Chief Justice POLAND. The cases were decided at the General Term of November, 1864, and the volume of Reports in which they will appear cannot yet be indicated.